



turn back the toxic tide

206 First Avenue S. Suite 410
Seattle, Washington 98104 USA
P 206.652.5555 F 206.652.5750 www.ban.org

September 16, 2010

To: Craig Shirey, Delaware Department of Natural Resources Environmental Program
Administrator – Fisheries;

Shawn Garvin, EPA mid-Atlantic Regional Administrator

From: Basel Action Network (BAN)

Subject: Concern over Likelihood of (PCBs) Allowed to be Sunk off Delaware Coast as part
of Artificial Reef Program

Mr. Craig Shirey and Mr. Shawn Garvin,

The Basel Action Network (BAN) has growing concerns over the likelihood that polychlorinated biphenyls (PCBs) have been illegally disposed of at sea as part of the Delaware Artificial Reefing Program. We also have similar concerns over the imminent sinking of the ex-Navel vessel Arthur Radford.

We further express alarm that apart from the likely dumping of persistent organic pollutants and other toxic materials into our marine environment, the scuttling of ships into our seas for whatever reason prevents thousands of tonnes of important metals resources from being recycled, contributing to unnecessary green house gas emissions and environmentally damaging primary metals extraction activities.

BAN has reason to believe several former Navy vessels have been sunk as artificial reefs through the Delaware Artificial Reefing Program without adhering to the Environmental Protection Agency's (EPA) *Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs* (BMP). After our careful review, we have reason to believe that these vessels were not properly managed to ensure that PCBs pursuant to the Toxic Substances Control Act, were not sunk with regulated quantities of PCBs remaining onboard.

BAN urges the State of Delaware in cooperation with the EPA, to thoroughly investigate the

sinking of three vessels, all prepared and sunk by Dominion Marine Group/American Marine Group for the Delaware Artificial Reefing Program:

1. Atlantic Mist, the former USS Ely (880), a Navy submarine escort vessel built in 1943 and sunk in January 2010;
2. Gregory Poole, the former USS Cruise (AM 215), a Navy Minesweeper built in 1943 and sunk in December 2007; and
3. YOG-93, a former Navy tanker built in 1945 and sunk in June 2007.

BAN's concerns stem from the fact that vessels of this vintage routinely contain large quantities of regulated PCBs in their paints, cabling, gasketry, flooring, etc. Despite this well known concern, repeated correspondence with Dominion Marine Group/American Marine Group President, Mr. Tim Mullane, and phone conversations with State officials have led us to conclude that safeguards against PCBs remaining on board vessels prior to sinking were simply ignored. BAN initially contacted Mr. Mullane on February 5, 2010 following the January sinking of the Atlantic Mist as an inquiry in the aftermath of the sinkings to ensure sinking preparation was conducted according to the BMP. BAN was initially informed by Mr. Mullane that Dominion Marine Group/American Marine Group had removed all electrical cables from the vessel, pulled all piping, cleaned all hydrocarbons and removed exfoliating paint. BAN was also told that the PCB sampling report did not show PCBs in paints.

BAN requested the PCB sampling report, PCB remediation plan, sinking preparation plan and additional documentation confirming the disposal of the removed electrical cables to ensure this was done at an approved PCB disposal facility. BAN's concerns escalated when Mr. Mullane responded to that request in an e-mail on February 15, 2010, stating *"I did find out that we did not remove any wire or cabling from the Mist because it had been cannibalized and stripped prior to our purchase, and had been sitting derelict at the pier in Reedville for 12 years prior to our purchase."* Follow-up requests for documentation continued through March 30, 2010, but all requests were ignored and no proof of documentation was ever provided.

Recently BAN resumed correspondence with Mr. Mullane in August 2010 in which Mr. Mullane agreed to answer questions via conference call with BAN. BAN prepared a series of questions and forwarded them to Mr. Mullane in advance, but Mr. Mullane later decided not to participate in the conference call and has since failed to respond to any correspondence from BAN.

Further, conversations by phone with Mr. Jeff Tinsman, the State of Delaware's Reef Program Administrator within the Delaware Department of Natural Resources - Fisheries, the agency responsible for overseeing the artificial reef program, was cause for further alarm when he reported that he was unaware of any PCB sampling or remediation conducted on the vessels mentioned above nor the protocols used for sampling and remediating PCBs prior to vessel sinking. Rather, Mr. Tinsman referred BAN to Mr. Tim Mullane of Dominion Marine Group/American Marine Group for questions related to sinking preparation. It is BAN's understanding that the contractor prepared the vessels without any oversight by the State of Delaware and the agencies responsible for artificial reefing operations.

On July 20, 2010, BAN filed a request for permission to review documents related to the sinking preparation of the aforementioned vessels, pursuant to the Freedom of Information Act (FOIA), Title 29, Delaware Code, Chapter 100. On August 30, 2010, BAN received confirmation from Mr. Tinsman of the State of Delaware: *"We have no correspondence or documentation of the clean-*

up and disposal procedures employed by our contractor, Dominion Marine Group, in preparation of these vessels for reefing. I have requested that the contractor provide that information in letter form, addressing the questions for each vessel listed. Please be assured that toxics issues were addressed by the contractor and that the vessels were inspected and approved for reefing by the U.S.C.G. prior to deployment.”

While Mr. Tinsman assures that toxics issues were addressed and that inspections and approvals were conducted by U.S.C.G., it is BAN's understanding that U.S.C.G. inspections prior to reefing deployment do not address PCB issues as described in the EPA BMP. Rather U.S.C.G. inspections ensure removal of petroleum products and debris that can become floatable. U.S.C.G. also ensures reef material is not a threat to navigational safety and that the towing is done safely and in accordance with towing regulations and guidelines. The EPA is the agency tasked with enforcing the Toxic Substances Control Act, the act that regulates the disposal of PCBs; however the EPA does not appear to have been directly involved with the sinking of these three former Navy vessels.

It is our fear that no PCB sampling program or remediation plan was ever prepared for the three aforementioned vessels and that it is therefore very likely that PCBs were illegally dumped off the coast of Delaware, Maryland and New Jersey. Such PCBs are likely to enter the marine food chain seriously risking contamination of the marine food chain.

This issue is now made more serious as American Marine Group is the firm currently under contract with the state of Delaware, Maryland and New Jersey for the PCB remediation and sinking preparation of the Ex-Arthur Radford, the 563 foot Navy destroyer slated for artificial reefing this fall off the coast of Delaware. BAN understands that American Marine Group is currently preparing the vessel for sinking according to their own PCB Sampling and Analysis Plan. However, according to Mr. Kyle Chelius, EPA Region III TSCA Compliance Officer, this plan has yet to be approved by the EPA. If the contractor is merely following their own protocols pursuant to the suspected protocols used for the Atlantic Mist, Gregory Poole, and YOG-93, and without regulatory oversight, an immediate response is necessary to provide such oversight by the EPA and the states of Delaware, Maryland and New Jersey.

BAN recently consulted a former Navy Engineer and ship dismantling expert for a PCB inventory estimate for the Atlantic Mist. The vessel was estimated to contain 16 tonnes of PCB containing electric cable. If the cables were in fact removed while sitting derelict in Reedsville, as Mr. Mullane reported, the cables would have likely been cut back to the bulkhead, removing 97% of the contaminated cables, but not fully remediating the vessel of all PCB contaminated material. Further, PCBs can be expected in other materials onboard. If documentation cannot be provided by the contractor or the State of Delaware to prove PCB sampling, remediation and disposal was conducted adequately, one must assume these efforts were not conducted in accordance with TSCA and all responsible parties must be held accountable for such violations. In that case, it is prudent that the ships be tested and if found to be contaminated, lifted immediately from the seabed and properly recycled.

Further, we call for immediate and thorough testing of the vessel Arthur Radford and a review of all of the alternatives for its disposal including her recycling, to determine the most benign environmental fate for the vessel. For too long in our view, the alleged benefits of artificial reefing have not been weighed against the superior benefits gained by safe and responsible ship recycling.

Your immediate attention to this matter is greatly appreciated. BAN hopes you will lead a thorough investigation into this matter to ensure the protection of the seas. Please contact me should you have questions or if BAN can be of any assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Puckett", with a stylized, flowing script.

Jim Puckett
Basel Action Network

CC: Alizabeth Olhasso, EPA Region III PCB Coordinator
Kelly Bunker, EPA Region III Ships and Permits
Kyle Chelius, EPA Region III TSCA Compliance Officer
Laura Casey, EPA HQ
Laura Johnson, EPA HQ
CDR Michael Antonellis, U.S.C.G Chief of Prevention, Delaware Bay Sector
Edward Bonner, Region III Army Corps of Engineers
Nancy Marker, Delaware Program Manager of Solid and Hazardous Waste Management
Patrick Emory, Delaware Division of Fish and Wildlife Director
David Chanda, New Jersey Division of Fish and Wildlife Director
Hugh Carberry, New Jersey Reef Coordinator
Tom O'Connell, Maryland Department of Natural Resources Fisheries Director
Erik Zlokovitz, Maryland Reef Coordinator
Julie Holstein, CBS News 60 Minutes
Edward Colimore, Philadelphia Inquirer
Leslie Kaufman, New York Times